

CHAPTER 2 -- ENVIRONMENTAL REVIEW

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CHAPTER 2

ENVIRONMENTAL REVIEW

I. OVERVIEW

This chapter discusses the key environmental requirements that CDBG recipients must comply with to assure protection of the environment and to consider how environmental conditions could impact their CDBG projects.

Different programs require the preparation of an environmental analysis at different times in the application funding process depending upon whether they are subject to federal or state laws, or both. Increasingly, federal and state funding programs are encouraging more thorough analysis of potential environmental impacts during the initial project planning stage, rather than waiting until the funding decision has been made.

Practical experience has shown that it is far better to identify potential problems in the planning process while the project is still being developed and to avoid them entirely, rather than to have to develop time consuming and expensive mitigation measures when a project is underway.

This is why, as part of your CDBG application, you were asked to prepare an environmental checklist. Completion of the checklist was intended to ensure that CDBG applicants adequately considered potential environmental impacts while the project was still being planned.

In addition, the checklist was designed to alert applicants to considerations that may have been addressed in the location, design, or construction of a public facilities project to avoid potential adverse environmental impacts or expensive mitigation or construction costs.

For example, could the project impact important wildlife habitat or alter an identified historic structure? Or, could the environment affect the project? For example, is there an identified floodplain surrounding the project area that could, at some time, threaten CDBG-funded facilities or are there soils or geologic conditions that could make building construction more expensive?

The environmental checklist submitted with your application also allowed the Montana Department of Commerce and other funding agencies to initially consider whether your proposed project might have adverse impacts and, if negative impacts appeared possible, whether you had proposed reasonable measures to mitigate them.

Before your CDBG project gets underway, federal and state law require that both the CDBG recipient and the Montana Department of Commerce (MDOC) conduct a final and thorough review of potential environmental impacts from the project. Two key laws govern this

environmental review process:

- ❑ the **National Environmental Policy Act (NEPA) of 1969** establishes national policies and procedures for protecting and enhancing environmental quality. Under NEPA, CDBG recipients are responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact. Under federal regulations, MDOC cannot release funds for a CDBG project until the CDBG recipient has certified that a review of the project activities demonstrates that no significant impact on the human environment is likely to occur or that actions have been initiated that would mitigate any potential impacts to the extent practicable.
- ❑ the **Montana Environmental Policy Act (MEPA) of 1971** was modeled after NEPA. MEPA seeks to avoid adverse impact on the natural and human environment by mandating careful consideration of the potential impacts of any development activity assisted with state funds or approved by a state agency. Under MEPA, the MDOC is responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact before authorizing it to begin. MDOC cannot release funds for a CDBG project until it has determined that the project will not have a significant impact on the quality of the human environment.

The significance of MEPA compliance and MDOC's consideration of potential environmental impacts from a CDBG project was elevated by a landmark Montana Supreme Court decision in October, 1999. A unanimous court ruled that under Montana's 1971 Constitution, Montanans have an inalienable right to a clean and healthful environment and to be free from unreasonable degradation of that environment. The court said that no state agency can allow an activity that has the potential to degrade the environment.

A. KEY ENVIRONMENTAL REVIEW STEPS

The key environmental review steps that apply to CDBG funded projects are summarized below and explained in detail in the following pages:

1. The grantee cannot incur or obligate costs for non-exempt activities (except certain administrative costs) and MDOC cannot release funds for the project until the environmental requirements have been satisfied and the CDBG contract has been signed and all contract conditions fulfilled.
2. An Environmental Certifying Official must be designated by the local government for its CDBG project.
3. An Environmental Review Record (ERR) must be maintained by the grantee for its CDBG project. A full copy of the ERR should be mailed to the MDOC after completion.

4. Grantees are strongly urged to initiate the historic preservation review process as soon as possible in order to avoid time delays with project start up activities.
5. "Exempt" projects do not need to satisfy federal environmental laws and regulations, but documentation justifying that they are "exempt" must be submitted to and approved by MDOC and maintained in the ERR. Finding A discusses "Exempt" activities in greater detail.
6. "Categorically Excluded" projects are "Exempt" from NEPA but may or may not be "Exempt" from other applicable environmental laws and regulations. "Environmental Findings B and C explain the forms which must be completed, notices which must be published, time periods which must be allowed for public comment, and information which must be submitted to MDOC.
7. Projects that are not "Exempt" or "Categorically Excluded" must undergo a more formal environmental review, either in the form of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). For an "EA," Environmental Finding D explains the forms which must be completed, notices which must be published, time periods which must be allowed for public comment, and information which must be submitted to MDOC.
8. If a Finding of No Significant Impact (FONSI) results under Finding D, the Consolidated Environmental Assessment form and a FONSI/NOI/RROF notice must be prepared and disseminated before funds may be released by MDOC.

B. SOURCES OF ENVIRONMENTAL INFORMATION

Exhibit 2-S found at the end of this chapter contains a listing of State and federal agencies that are sources of environmental information. For instance, the Montana Natural Heritage Program maintains an excellent database of environmental information for Montana.

C. OUTLINE OF CDBG'S ENVIRONMENTAL REVIEW PROCESS

The environmental review process presented in this chapter is based on the following outline.

1. Receive Authorization from MDOC to Incur Costs for Environmentally Exempt" Activities
2. Pass resolution designating the Environmental Certifying Official
3. Initiate Historic Preservation Review
4. Undertake Remaining Environmental Review and Make One of the Following Five Environmental "Findings" (Findings A through E) described on the following pages.

FINDING A: All project activities can be considered “Exempt”.

If so:

1. prepare Finding of Exemption
2. submit to MDOC for drawdown of funds, as needed

OR

If all activities cannot be considered “Exempt,” proceed to Finding B.

FINDING B: All project activities can be considered “Categorically Excluded” AND no activities are affected by federal statutes or executive orders.

If so:

1. review the list of possible “Categorically Excluded” activities
2. complete Statutory Checklist
3. if **all** activities can be “Categorically Excluded” and no activities are affected by Federal Statutes or Executive Orders, project is also considered “Exempt” and applicant can proceed as follows:
 - a. prepare finding of Exemption
 - b. submit to MDOC for drawdown of funds

OR

If all activities cannot meet these criteria, proceed to Finding C.

FINDING C: All project activities can be considered “Categorically Excluded” AND some activities are affected by federal statutes and executive orders.

If so:

1. review the list of possible “Categorically Excluded” activities.
2. Complete Statutory Checklist
 - a. prepare Finding of Categorical Exclusion
 - b. prepare NOI/RROF
 - c. submit RROF and Certification to MDOC

OR

If all activities cannot be considered “Exempt” or “Categorically Excluded,” proceed to Finding D.

FINDING D: Preparation of an Environmental Assessment (EA) AND Finding Of No Significant Impact (FONSI) is necessary.

If so:

1. review examples of activities which require preparation of an EA
2. prepare EA
3. if completion of the EA results in Finding of No Significant Impact," proceed as follows:
 - a. prepare combined FONSI/NOI/RROF
 - b. submit RROF to MDOC

FINDING E: Preparation of an Environmental Assessment (EA) AND Finding Of Significant Impact is necessary.

If so:

Consult MDOC for further action.

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II. APPLICABLE REQUIREMENTS

A. FEDERAL REQUIREMENTS

In summary, the key federal environmental requirements which grantees must comply with include:

1. **Section 104(f) of the Housing and Community Development Act of 1974.** This section of the Act expresses the intent that the policies of the National Environmental Policy Act of 1969 (NEPA) and other provisions of law which further the purpose of NEPA be effectively implemented in connection with the expenditure of funds under CDBG. Such other provisions of law which further the purpose of NEPA are specified in regulations issued pursuant to Section 104(f) of the Act and contained in 24 CFR Parts 51 and 58.
2. **National Environmental Policy Act of 1969** (42 U.S.C. Section 4321, et seq. and 24 CFR Part 58). The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety or other undesirable and unintended consequences. The federal environmental review procedures are a part of this process.
3. **24 CFR Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities** (April 30, 1996). This provides guidance to grantees for the implementation of NEPA for CDBG projects. It defines the grantee's and the

State's responsibilities in conducting an environmental review and details the procedures necessary to ensure compliance with the applicable regulations.

4. **24 CFR Part 51 - Environmental Criteria and Standards:** Subpart B, Noise Abatement and Control; Subpart C, Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature; and Subpart D, Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields. These regulations provide standards for determining whether the proposed location of a HUD-assisted project will be in an unacceptable proximity to sources of noise or hazardous operations which pose risk to human health and welfare. In addition, these regulations prohibit the use of HUD assistance in areas determined to have high risk potential near airports. With respect to noise and hazardous operations, guidance is provided which establishes mitigating procedures which in some cases will reduce the noise level or danger from hazardous operations to an acceptable level or degree.
5. **Clean Air Act** (42 U.S.C. 7401, et seq.) This Act prohibits engaging in, supporting in any way or providing financial assistance for, licensing or permitting, or approving any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards.
6. **Flood Disaster Protection Act of 1973:** Public Law 93-234, 87 Stat. 975, (42 U.S.C. 4001-4128). Section 102(a) required, on and after March 2, 1974, the purchase of flood insurance, as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of HUD as an area having special flood hazards.
7. **Executive Order 11988**, May 24, 1977: **Floodplain Management** (42 FR 26951, et seq.) The intent of this Executive Order is to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains and avoid direct or indirect support of floodplain development wherever there is a practical alternative.
8. **Executive Order 11990**, May 24, 1977: **Protection of Wetlands** (42 FR 26961, et seq.). The intent of this Executive Order is to avoid adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands, wherever there is a practical alternative. The grant recipient must avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands.
9. **Section 106 of the National Historic Preservation Act of 1966** (16 U.S.C. 470, as amended) through completion of the procedures outlined in 36 CFR Parts 800 and 63. Compliance with these procedures should include consulting with the State Historic Preservation Office (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that may exist within a proposed CDBG project's area of potential environmental impact. Compliance also includes consulting with, as needed, the SHPO, the keeper of the National Register of Historic Places, and the

Advisory Council on Historic Preservation to evaluate the significance of historic or prehistoric properties which could be affected by CDBG work and to determine how to avoid or mitigate adverse effects to significant properties from project activities.

10. **Lead-based Paint (LBP).** **Title IV of the Lead-based Paint Poisoning Prevention Act** (42 U.S.C. 4831). This prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance of any kind; and **HUD Lead-Based Paint Requirements for Housing Rehabilitation Projects, 24 CFR Part 35, subparts B-R.** See **Exhibit 2-V** for a summary, and for the complete rules, see <http://www.hud.gov/offices/lead/leadsaferule/index.cfm>. See pages **2-33** and following for more about CDBG requirements for handling LBP.
11. **Asbestos.** In Montana, asbestos is regulated by the Administrative Rules of Montana (ARM), Chapter 42. In addition to the ARM requirements, grantees may also be affected by the federal Environmental Protection Agency's *National Emission Standard For Hazardous Air Pollutants (NESHAP)*, *40 CFR Part 61, Subpart M*, which pertains to asbestos. The other regulation that commonly applies to asbestos abatement projects is the Occupational Safety and Health Administration's (OSHA) Construction Standard (29 CFR 1926.1101). See pages **2-35** and following for more about CDBG requirements for handling asbestos.
12. **Radon.** The U.S. Congress has set a long-term goal that indoor radon gas levels be no more than outdoor levels. See EPA's Radon-Indoor Air website for Radon hazard information, see <http://www.epa.gov/iaq/radon/index.html> and EPA's "Radon -- Frequent Questions" webpage at <http://www.epa.gov/iaq/radon/radonqa1.html>. Other sources of information are available in the form of several booklets produced by the EPA. The booklets are available by request from MDOC. The State of Montana's radon contact phone number for general information is (406) 444-6768. Other sources of information are available in the form of several booklets produced by the EPA. The booklets are available by request from MDOC. See pages **2-36** and following of this Manual for more about CDBG requirements for handling asbestos.
13. **Solid Waste Disposal Act**, as amended by the **Resource Conservation and Recovery Act of 1976** (42 U.S.C. Section 6901, et seq.). The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.
14. **Safe Drinking Water Act of 1974** (42 U.S.C. Section 201, 300(f) et seq. and 21 U.S.C. Section 349), as amended, particularly Section 1424(e) (42 U.S.C. Section 300h-303(e)) which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (EPA) determines may contaminate an aquifer which is the sole or principal drinking water source for an area.
15. **Federal Water Pollution Control Act** (P.L. 92-500), as amended (33 U.S.C. 1251-1376), including **The Clean Water Act of 1977**, Public Law 92-212 (33 U.S.C. Section

1251, et seq.). This provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.

16. **Endangered Species Act of 1973**, as amended (16 U.S.C. 1531 et seq.). The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction of or modification of the habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical.
17. **Fish and Wildlife Coordination Act of 1958**, as amended, (U.S.C. 661 et seq.). This Act requires that wildlife conservation receive consideration and is coordinated with other features of water resource development programs.
18. **Wild and Scenic Rivers Act of 1968**, as amended (16 U.S.C. 1271, et seq.). The purpose of this Act is to preserve selected rivers or sections of rivers in their free-flowing condition, to protect the water quality of such rivers and to fulfill other vital national conservation goals. Federal assistance by loan, grant, license or other mechanism cannot be provided to water resources construction projects that would have a direct and adverse effect on any river included or designated for study or inclusion in the National Wild and Scenic River System.
19. **Farmlands Protection Policy Act of 1981** (7 U.S.C. 4201(b) and 4202) and any applicable regulations (7 CFR Part 658). The purpose of this Act is to establish compliance procedures for any federally assisted project which will convert farmlands designated as prime, unique, statewide or locally important, to non-agricultural uses.
20. **Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**, February 11, 1994 (59 FR 2629), 3 CFR, 1994 comp.

Other applicable laws and regulations include:

- ☐ **Executive Order 11593** - **Protection and Enhancement of the Cultural Environment**;
- ☐ **National Flood Insurance Program** (44 CFR 59-79)
- ☐ **Executive Order 11288** - **Prevention, Control, and Abatement of Water Pollution** by Federal Activities;
- ☐ **Executive Order 11296** - **Evaluation of Flood Hazard** in Locating Federally Owned or Financed Buildings, Roads and Other Facilities, and in Disposing of Federal Lands and Properties;
- ☐ **Executive Order 11514** - **Protection and Enhancement of Environmental Quality**;

- ❑ **Reservoir Salvage Act of 1960** as amended by the **Archeological and Historic Preservation Act of 1974** (16 U.S.C. 469).

B. STATE REQUIREMENTS

Some of the key State environmental requirements which may affect local projects include the following:

- ❑ **Montana Environmental Policy Act** (MEPA), Title 75, Chapter 1, MCA;
- ❑ **Stream Preservation Act**, Title 87, Chapter 5, Part 5, MCA;
- ❑ **The Natural Streambed and Land Preservation Act of 1975 - Lakeshore Preservation Act**, Title 75, Chapter 7, Parts 1 and 2, MCA;
- ❑ **Montana Solid Waste Management Act**, Title 75, Chapter 10, Part 2, MCA;
- ❑ **Solid Waste Management Act**, Title 75, Chapter 10, Part 1, MCA;
- ❑ **Clean Air Act of Montana**, Title 75, Chapter 2, MCA;
- ❑ **Water Quality Act of Montana**, Title 75, Chapter 5, MCA;
- ❑ **Public Water Supply**, Title 75, Chapter 6, MCA;
- ❑ **Floodplain and Floodway Management**, Title 76, Chapter 5, MCA;

ENVIRONMENTAL ACRONYMS

The following acronyms are used throughout this Chapter:

EA	-	Environmental Assessment
EIS	-	Environmental Impact Statement
FONSI	-	Finding of No Significant Impact
ERR	-	Environmental Review Record
ROF	-	Release of Funds
RROF	-	Request for Release of Funds
NOI/RROF	-	Notice of Intent to Request Release of Funds

III. GRANTEE RESPONSIBILITIES

The CDBG complexities of the NEPA environmental review process are often difficult to understand. The procedures outlined on the following pages are intended to present the process as simply as possible. If questions arise, grant recipients should contact the CDBG program specialist assigned to their project.

In addition, if at any time during the period of the CDBG project it becomes necessary to substantially revise or amend the project scope of work, it may be necessary to repeat the environmental review process to assess the impact of proposed changes. In these cases the CDBG program specialist should be contacted for guidance.

1. **Receive Authorization from MDOC to Incur Costs for "Environmentally Exempt" Activities**

Following the announcement of grant awards, grant recipients must execute a grant contract with MDOC. **Costs cannot be incurred against the CDBG grant until the grant contract is signed and specific authorization to incur costs is received from the CDBG program specialist.**

When the grant contract has been executed, the CDBG program specialist will issue a specific authorization for each grant recipient to begin incurring costs for "environmentally exempt" activities. "Environmentally exempt" activities include administrative activities such as project planning and management, administrative and engineering consultant selection, engineering and design costs, and environmental review activities, including the historic preservation review. (See Chapter 1 - Project Start Up.)

Administrative activities are "exempt" from the environmental review requirements under 24 CFR Part 58.34. These are the only costs that can be incurred before the Environmental Review Record (ERR) is completed and funds are released. It is important to note that expenditures for such costs are paid by the grantee until reimbursement at a later date by MDOC.

As emphasized in Chapter 1, **reimbursement is contingent upon the grantee's completion of the ERR, release of funds by MDOC, the signing of the grant contract between the grantee and MDOC, and fulfillment of all special conditions incorporated in the contract. Unless all of these items are completed, MDOC cannot reimburse the local government for any costs incurred.**

2. **Designate the Environmental Certifying Official**

As a second step, all grantees must designate an Environmental Certifying Official by an adopted resolution (**Exhibits 2-A.1 and 2-A.2**) who will be responsible for all further activities associated with the environmental review. The certifying official may be the chief elected official or any other official or staff of the recipient jurisdiction. This person should

be capable of defending any information provided to the public or MDOC, or any conclusions or determinations arrived at, as part of the environmental review process. In some instances, a local government employee with technical expertise to conduct the review may receive this designation, such as the local planning or community development director.

In other cases where a consultant will conduct the research for the environmental review, MDOC requires that the local government designate a local official or staff member as the Environmental Certifying Official. That official would then be responsible for monitoring the technical work performed by the consultant and signing off on the appropriate certifications.

For purposes of federal law, the designated Environmental Certifying Official will be considered a federal official under the requirements of 24 CFR Part 58, and will be responsible for assuring compliance with all of the environmental requirements, and will represent the grantee in any challenge to the local government's compliance with environmental requirements.

3. Initiate Historic Preservation Review

During project start up, special attention must be paid to the federal requirements for historic preservation. To avoid delay, it is important at the onset that grantees consider the potential effect of the project on historic properties and archaeological resources. As a part of project start up, grant recipients should review **Exhibit 2-H**.

As explained in Exhibit 2-H, a crucial initial step grant recipients must take is to formally request comments from the Montana State Historical Preservation Office (SHPO) regarding possible historical impacts. A model letter to be sent to SHPO is provided (**Exhibit 2-I**).

Section 106 of the National Historic Preservation Act [36 CFR Part 800] requires that federally assisted undertakings take into account the effect of the project on properties included in or eligible for the National Register of Historic Places. In particular circumstances, prior to approval of an undertaking, the federal Advisory Council on Historic Preservation must be allowed an opportunity to comment -- 36 CFR Part 800.1(a).

Montana CDBG recipients are required to plan and carry out their projects as may be necessary to minimize harm to historic properties and to consider mitigating measures where appropriate. Section 106 requires that the historic preservation review process described in **Exhibit 2-H** be completed prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license or permit -- 36 CFR Part 800.3 (c).

4. Undertake Remaining Environmental Review and Make One of the Following Five Environmental "Findings"

Each CDBG grantee must prepare and maintain a complete written record of the environmental review undertaken. This written record or file is called the Environmental Review Record (ERR) and must be available for public review in the general offices of the local government. It must contain a description of the project and each of its component activities carried out by the grant recipient, including any documents, notices, information, and public comments received pertinent to the environmental review. Public comments and concerns, as well as their appropriate resolution by the grantee, are extremely important and must be addressed and fully documented in the ERR.

Environmental reviews on Montana CDBG projects will have one of the following five alternate environmental "findings" -- Alternatives A through E -- relative to CDBG environmental requirements. **Grantees should examine the alternative findings beginning in alphabetical order, progressing through the options until an alternative appropriate to all CDBG project activities is identified. Each alternative is progressively more complicated and detailed than the preceding.**

All CDBG projects will fall under one of the following five alternative determinations:

- 1. Environmental Finding A:** All Project Activities Can Be Considered Exempt.
- 2. Environmental Finding B:** All Project Activities Can Be "Categorically Excluded" AND No Activities Are Affected by Federal Statutes or Executive Orders.
- 3. Environmental Finding C:** All Project Activities Can Be "Categorically Excluded" AND Some Activities Are Affected by Federal Statutes and Executive Orders.
- 4. Environmental Finding D:** Preparation of an Environmental Assessment (EA) is Necessary AND a Finding of No Significant Impact (FONSI) is Necessary.
- 5. Environmental Finding E:** Preparation of an Environmental Assessment (EA) is Necessary AND a Finding of Significant Impact is Necessary.

Following the announcement of grant awards, MDOC submits summaries of each project to the Environmental Quality Council and the State Historic Preservation Office for their initial review. These state agencies are advised that an ERR for any project will be prepared and that a copy of the ERR will be available at MDOC for their review upon completion.

Grantees should check with their CDBG program specialist prior to publication of their environmental finding to determine whether MDOC has received requests for the ERR from other agencies.

An ERR Checklist (**Exhibit 2-B**) has been prepared to assist local communities with the environmental review process.

It is MDOC policy that, unless it is aware of any evidence to the contrary or circumstances indicate otherwise, a CDBG project considered "exempt" or "categorically excluded" from NEPA requirements pursuant to 24 CFR Part 58, Subparts 58.34 and 58.35, will not be considered a major action of state government significantly affecting the quality of the human environment. Therefore, such projects are deemed "categorically excluded" from MEPA requirements pursuant to rule 8.2.304(5) A.R.M. and the preparation of an environmental assessment or an environmental impact statement will not normally be required.

MDOC may, at its discretion, request the preparation of an environmental assessment by the recipient of a CDBG grant at any time prior to the submittal of the grant recipient's environmental finding pursuant to 24 CFR, if available information indicates that proposed project activities may significantly affect the quality of the human environment.

IV. **ENVIRONMENTAL FINDING LEVEL A**

FINDING A: ALL PROJECT ACTIVITIES CAN BE CONSIDERED EXEMPT.

If so:

1. prepare Finding of Exemption
2. submit to MDOC for drawdown of funds, as needed

OR

if all activities cannot be considered exempt, proceed to Finding B

Grantees do not have to comply with environmental requirements of NEPA or other applicable federal environmental laws if the **entire project** (non-administrative as well as administrative activities) is **determined to be exempt** as defined under 24 CFR 58.34.

In these cases, under the Montana CDBG program, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); however, the project must still comply with all other Montana environmental laws.

Most grants funded under the Montana CDBG Program involve activities in addition to those considered exempt.

Examples of "exempt activities" include:

- ☐ Administrative and management activities;
- ☐ Environmental review activities;
- ☐ Engineering and design costs associated with eligible projects;
- ☐ Interim assistance to respond to imminent threat or physical deterioration, provided that the assistance does not alter environmental conditions;
- ☐ Certain public service activities that will not have a physical impact or result in any physical change; and
- ☐ Certain "categorically excluded" projects (see Environmental Finding B) provided that there are no circumstances which require compliance with Federal laws or statutes.

A. QUALIFYING FOR EXEMPTION – ENVIRONMENTAL FINDING A

To qualify for exemption, all activities of the project must be determined by the certifying official to be exempt under 24 CFR Part 58.34.

If **all activities are exempt**, the certifying official must prepare a Finding of Exemption for All Project Activities (**Exhibit 2-P**) which lists the exempt activities and cites the appropriate statutory authority. In addition in some cases certain CDBG assisted projects, such as some economic development projects, that are "categorically excluded" are also exempt from the requirements of NEPA or other federal environmental laws. In these cases a Finding of Exemption can be made based upon **Exhibit 2-R**. If considering a finding based upon **Exhibit 2-R**, please contact the assigned CDBG program officer for guidance.

The Finding of Exemption must then be submitted to MDOC with the original copy retained in the grantee's ERR file. MDOC will then review the Finding, and if approved, send a letter of concurrence to the grantee and release project funds. A copy of this letter must be retained in the ERR file.

B. ERR FILE REQUIREMENTS FOR FINDING A

In the event the entire project is "exempt, the ERR file need only contain the following:

- ☐ **Exhibit 2-A** Designation by adopted resolution of Environmental Certifying Official;
- ☐ **Exhibit 2-P** Finding of Exemption for All Project Activities;
- ☐ **Exhibit 2-R** Finding of Exemption, (if applicable);
- ☐ Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter; and
- ☐ Any other accompanying documentation and applicable correspondence to and from MDOC.

V. **ENVIRONMENTAL FINDING LEVEL B**

FINDING B: ALL PROJECT ACTIVITIES CAN BE "CATEGORICALLY EXCLUDED" AND NO ACTIVITIES ARE AFFECTED BY FEDERAL STATUTES OR EXECUTIVE ORDERS.

If so:

1. review the list of possible "categorically excluded" activities
2. complete Statutory Checklist
3. if all activities can be "categorically excluded" and no activities are affected by Federal Statutes or Executive Orders, project is also considered "exempt" and applicant can proceed as follows:
 - a. prepare Finding of Exemption
 - b. submit to MDOC for drawdown of funds

OR

if all activities cannot meet these criteria, proceed to Finding C. Examples of "categorically excluded" activities, as defined in 24 CFR 58.35, are described in the following section.

A. **POSSIBLE "CATEGORICALLY EXCLUDED" ACTIVITIES**

Unless the project is documented in the ERR as being "exempt" (as in Environmental Finding A), the grantee must determine whether it is "Categorically Excluded" from NEPA requirements. To be considered "Categorically Excluded," all activities of the overall project must meet the definition contained in 24 CFR 58.35.

First-time Home Buyer projects will generally fall under an Environmental Finding B. An environmental site specific checklist for home buyer projects must be completed for each home to be assisted with CDBG project funds. (Please see Exhibit 2-C.6&7.)

As a general guide, "Categorically Excluded" activities are those that do NOT result in a major change in land use or activity at a site (for example, replacing water pipes in the same trench).

The following activities are categorically excluded under NEPA but may be subject to review under authorities listed in 24 CFR 58.5:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without

change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when the following conditions are met:
 - a. In the case of multifamily residential buildings:
 - (1) Unit density is not changed more than 20 percent;
 - (2) The project does not involve changes in land use from residential to non-residential; and
 - (3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - b. In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (1) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - (2) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
4. An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.
5. Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
6. Combinations of the above activities.

In addition, **demolition activities** where no new, replacement construction is involved may be considered as categorically excluded; however, the demolition must have SHPO approval. In addition, the grant recipient should be aware that if there are hazardous materials on the site, an environmental assessment could be required.

"Categorical Exclusion" refers to exclusion from NEPA requirements -- the requirements of NEPA do not apply because the project falls under one of the specific categories just described. Projects that are "Categorically Excluded" do not require preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). In these cases, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); however, the project must still comply with all other Montana environmental laws.

B. THE STATUTORY CHECKLIST (APPLICABLE TO ENVIRONMENTAL FINDINGS B AND C)

When considering "Categorically Excluded Activities", the Environmental Certifying Official must present evidence that the proposed CDBG project will meet the environmental requirements contained in other applicable federal laws, other than NEPA. This is achieved through completion of the Statutory Checklist (Exhibit 2-C).

Exhibit 2-C includes the Statutory Checklist format and a listing of the applicable federal laws and executive orders. By completing the checklist, the certifying official considers the effect of the CDBG project on a variety of potential environmental concerns as well as the effect of the environment on the project (such as noise or air traffic hazards). For each compliance factor (air quality, floodplains, etc.) the certifying official must determine whether the factor:

- ✓ is not applicable to the project;
- ✓ requires further consultation;
- ✓ requires additional review;
- ✓ requires a permit;
- ✓ requires permits and such permits have been obtained; or
- ✓ requires compliance with conditions and/or the undertaking of mitigation actions.

The certifying official should be certain to retain all of the documentation (letters, test results, maps, notes on comments of authorities contacted) which were gathered to support the documentation.

Situations which require additional consultation are those in which contact with the appropriate federal or federally authorized agency is necessary. The consultation can result in no need to further address the requirements, the placement of conditions on the grantee prior to the release of funds, or in some cases, may halt the project until mitigating measures are identified and steps taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the Statutory Checklist.

If mitigating actions are required, the certifying official should fully describe the actions the grantee will take to assure compliance.

Completion of the Statutory Checklist (Exhibit 2-C) is required only for “Categorically Excluded” activities -- i.e., where there are no major changes in land use or activities at a proposed site.

1. Suggestions for Preparing the Statutory Checklist

To help local, State, and federal agencies respond more effectively to your inquiries, we suggest that you prepare a letter (including your phone number) which describes the project and attach a map to show the project's location. The map can be photocopied from the project application. Follow-up phone calls to agency officials are also suggested.

- a. Historic Preservation -- As part of the Statutory Checklist, special attention should be paid to historic preservation requirements. Though historic preservation requirements are one element of the Statutory Checklist, due to timeline constraints, historic preservation requirements are one of the earliest environmental steps grantees should initiate. (See **Exhibit 2-H**, Historic Preservation Review Process.)
- b. Floodplains and Wetlands -- In addition, special attention should be paid to requirements related to floodplains and wetlands. The grantee must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management Section
Montana Department of Natural Resources and Conservation
48 N. Last Chance Gulch
State of Montana
Helena, Montana 59620-1601
Phone Number: 444-6654

The federal authority for grantee obligations related to floodplains and wetlands appears in Executive Orders 11988 and 11990, respectively. **If the proposed CDBG project is located in or will affect a floodplain**, the grantee must follow the **"Eight-Step Decision Making Process"** to achieve compliance (**See Exhibit 2-D**) and must provide documentation that the eight steps outlined in **Exhibit 2-D** have been carried out. To provide adequate documentation, it is recommended that recipients develop a narrative

outlining specifically how each of the eight steps have been complied with. To assist grant recipients in the documentation of the eight-step process, Exhibit 2-E is provided. The completed Exhibit 2-E (or equivalent narrative information) should be included in the recipient's environmental review record.

If any of the project activities will be situated in floodplains or wetlands, the grantee is **required to publish two notices** related to determination of the impact of the project in the local newspaper. In communities that do not have a local newspaper, the notice should be posted in public buildings such as the town hall, post office, schools, and/or libraries.

The **first** notice is called an Early Public Notice (for Floodplains and/or Wetlands), Exhibit 2-F, which identifies the nature of the project activity and solicits comments for a period of 15 days. It is recommended that the Early Public Notice include an announced date for a public hearing to be held during the 15-day comment period to give the public an opportunity to discuss any floodplain or wetlands-related concerns in regards to the project. If a public hearing is held, it is recommended that a minimum of seven days be provided between the date of the Early Public Notice and the hearing date.

The **second** notice, the Notice of Explanation for Floodplains and/or Wetlands, (Exhibit 2-G), must be published a **minimum** of 15 days after the Early Public Notice and should include the determination as to the impact of the proposed project and whether there are any reasonable alternatives to the proposed activity. Along with documentation of the eight-step process, the CDBG grantee must submit proof of publication and compliance with the minimum public notice requirements with its environmental finding. The purchase of floodplain insurance is required if a structure financed with CDBG funds is constructed within a floodplain. For the assistance of grant recipients, the publication Further Advice on Executive Order 11988 Floodplain Management is available from MDOC.

- c. HUD Environmental Standards -- As part of the Statutory Checklist, attention should also be paid to HUD Environmental Criteria and Standards (24 CFR Part 51), relating to the following three areas:
 - (1) noise abatement and control;
 - (2) siting of HUD-assisted projects near hazardous operations; and
 - (3) siting of HUD-assisted projects in airport runway clear zones, clear zones and accident potential zones.

Noise abatement and control standards refer to encouraging land use patterns for housing and other noise sensitive land uses that will provide a suitable separation between them and major noise sources, including consideration of noise attenuation measures. The HUD publication The Noise Guidebook is available at www.hud.gov/offices/cpd/energyenvironmental/resources/guidebooks/noise/index.cfm to assist recipients in assessing noise impacts for projects.

Projects located within 15 miles of a military or civilian airport with scheduled jet aircraft operations, within 3000 feet (approximately six-tenths of a mile) of a railroad track, and/or 1000 feet from a 4-lane highway need to assess noise impacts to the proposed project. This document sets forth procedures whereby people without technical training can assess the exposure of a housing site or public facility such as a Head Start to present and future noise conditions. The noise assessment procedures would be especially applicable to a proposed CDBG-assisted housing rehabilitation or new construction project located in the vicinity of an airport, a highway with significant truck traffic, or in close proximity to a rail line.

Siting of HUD-assisted projects near hazardous operations refers to hazards such as petroleum products operations or explosive or flammable chemical facilities, large propane storage tanks, or similar natural gas storage facilities. In addition to the HUD guidelines, to assist grant recipients in evaluating this factor, the publication Siting of HUD-Assisted Projects Near Hazardous Facilities is available from MDOC.

Siting of HUD-assisted projects in runway clear zones refers to the goal of promoting compatible land uses around civil airports and military airfields, and at the same time discouraging incompatible development. The goal of these special environmental standards is to prevent the location of incompatible land uses, especially within airport runway clear zones. More specific guidance is provided in the HUD publication, A Guide to HUD Environmental Criteria and Standards Contained in 24 CFR Part 51.

- d. HUD Lead-based Paint Standards -- As part of the Statutory Checklist, attention should also be paid to HUD Lead-based Paint Standards (24 CFR Part 35) and Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act that appear within Title X of the Housing and Community Development Act of 1992. For more information about **HUD Lead-based Paint (LBP) requirements please see pages 33 and 34 of this chapter and Exhibit 2-V**.
- e. EPA and OSHA Asbestos Standards and Regulations -- The State of Montana is delegated by EPA to administer sections of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) regulations, through the Montana Department of Environmental Quality's

Asbestos Control Program. OSHA's asbestos standard (29 CFR 1926.1101) also has been adopted in part by the Department of Environmental Quality's Asbestos Control Program. For more information about Asbestos requirements see pages 35 and 36 of this chapter.

The Department of Environmental Quality's Asbestos Control Program may be reached at (406) 444-3490. Their DEQ asbestos control website is www.deq.state.mt.us/pcd/awm/acp

C. FINDING OF EXEMPTION FOR FINDING B

According to 24 CFR Part 58.35 **if**, after completing the Statutory Checklist, the grant recipient determines (1) that each and every project activity is Categorically Excluded and (2) that the proposed project is not affected by any of the federal laws and executive orders listed in the Statutory Checklist, **then** the grantee can claim "Exemption" under 24 CFR 58.34(a)(12).

The grant recipient must prepare a written "Finding of Exemption for All Project Activities" (**Exhibit 2-R**) and submit it along with the Statutory Checklist to MDOC.

Environmental Finding B is SELDOM utilized for CDBG Housing and Public Facilities projects because most activities are affected by at least one of the federal laws and executive orders listed in the Statutory Checklist. (Environmental Findings C and D, described in the following sections are much more typical.)

D. ERR FILE REQUIREMENTS FOR ENVIRONMENTAL FINDING B

The ERR file must contain the following documentation:

- ☐ **Exhibit 2-A** Designation by adopted resolution of Environmental Certifying Official;
- ☐ **Exhibit 2-C** Statutory Checklist;
- ☐ **Exhibit 2-R** Finding of Exemption for All Project Activities;
- ☐ Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter
- ☐ Any other accompanying documentation and applicable correspondence to and from MDOC should also be included in the ERR file.

VI. **ENVIRONMENTAL FINDING LEVEL C**

Finding C: ALL PROJECT ACTIVITIES CAN BE "CATEGORICALLY EXCLUDED" AND SOME ACTIVITIES ARE AFFECTED BY FEDERAL STATUTES AND EXECUTIVE ORDERS.

If so:

1. review the list of possible "categorically excluded" activities.
2. complete Statutory Checklist
3. if all activities can be "categorically excluded" and some activities are affected by Federal Statutes and Executive Orders, proceed as follows:
 - a. prepare Finding of Categorical Exclusion
 - b. prepare NOI/RROF
 - c. submit RROF and Certification to MDOC

OR

if all activities cannot be considered "exempt" or "categorically excluded", proceed to Finding D

The Statutory Checklist discussed under Finding B must also be completed for Finding C (Exhibit 2-C). Under 24 CFR Part 58.35(a), if a grant recipient does determine that a project is Categorically Excluded and determines after completing the Statutory Checklist that any of the Federal laws and executive orders listed in the Statutory Checklist are applicable to some project activities, the grant recipient must follow the steps outlined below.

A. FINDING OF CATEGORICAL EXCLUSION

After completing the Statutory Checklist, the certifying official must prepare and submit to MDOC, along with a copy of the Statutory Checklist, a Finding of Categorical Exclusion (**Exhibit 2-J**) which lists each activity identified as "Categorically Excluded," and gives the statutory or regulatory authority for that determination. In these cases under the Montana CDBG program, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); **however, the project must still comply with all other Montana environmental laws.**

Environmental Finding C is a common finding for Montana CDBG Housing and Public Facilities projects which involve a construction activity in which no major change in land use or activity at a site is proposed (for example, housing rehabilitation projects or simply replacing outdated water or sewer pipe in the same trench with larger diameter pipe.)

If it is determined that there is some continuing impact that requires mitigation, MDOC may direct the grantee to proceed to Environmental Finding D and complete an EA.

1. Publication, Distribution, and Submission to MDOC of a Notice of Intent to Request Release of Funds (NOI/RROF)

As a next step, grantees must publish, distribute, and submit to MDOC a Notice of Intent to Request Release of Funds (NOI/RROF) (Exhibit 2-K). As a minimum, the notice should be sent to the local news media, to individuals and groups known to be interested in the project, and to appropriate local, State, and federal agencies. Exhibit 2-0 lists the agencies and groups which the grantee must provide with a copy of the NOI/RROF.

The NOI/RROF must be published at least once in a newspaper of general circulation in the community. In the cases where there is no regularly published local or area-wide newspaper, the grantee must post the notice prominently at the local post office. The notice should also be prominently displayed in other public buildings or sites.

The NOI/RROF (**Exhibit 2-K**) indicates the grantee's intention to submit to MDOC a Request for Release of Funds no sooner than seven days following the publication of the notice. This gives the public and State and federal agencies **at least seven days** to submit comments to the grantee before any other action is taken. It also establishes **a minimum of 15 days** during which the public may later comment to MDOC, after MDOC has received the request. After receipt of the Request, MDOC must wait a minimum of 15 calendar days for public comment prior to the release of funds.

All required minimum time periods are counted as **calendar days**. **The first day of a time period begins on the day following the publication date of any notice** (24 CFR part 58.21).

2. Submission of the Request for Release of Funds (RROF) and Certification to MDOC

At least seven days following publication of the NOI/RROF and after all local comments are considered, the grantee should submit the RROF (Exhibit 2-L) to MDOC. The RROF also contains a Certification which must be signed following the seven day local comment period, by the Environmental Certifying Officer indicating that the Environmental Review

has been conducted in the prescribed fashion. Proof of publication of the NOI/RROF must also accompany the RROF. As noted, MDOC must wait a minimum of 15 calendar days after receipt of the RROF for public comment prior to the release of funds. A sample time-line illustrating minimum calendar periods for publication and public comment is noted below:

March 15, 200__	Local publication date of NOI/RROF
March 16-22, 200__	Minimum 7-day local comment period
March 23, 200__	Grantee Mails RROF to MDOC, allowing three days for delivery
March 26, 200__	MDOC receives RROF
March 27 - April 10, 200__	MDOC 15-day comment period
April 11, 200__	MDOC release of funds

The Environmental Review Record must be complete. In addition to being reviewed by MDOC CDBG staff, your Environmental Review Record may later be reviewed in detail by HUD environmental specialists to assure local and State compliance with federal environmental requirements. The most pertinent information in the ERR must also be sent to MDOC, including in particular the Statutory Checklist and the historic preservation and floodplain elements (if applicable).

B. ERR FILE REQUIREMENTS FOR FINDING C

The following must be maintained in the ERR file and sent to MDOC:

- ☐ **Exhibit 2-A** Designation by adopted resolution of Environmental Certifying Officer;
- ☐ **Exhibit 2-C** Statutory Checklist;
- ☐ **Exhibit 2-D** Eight-Step Decision Making Process (if applicable);
- ☐ **Exhibit 2-E** Documentation of Eight-Step Decision Making Process (if applicable);
- ☐ **Exhibit 2-F** Early Public Notice (if applicable);
- ☐ **Exhibit 2-G** Notice of Explanation (if applicable);
- ☐ Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter, including **Exhibit 2-I**, Notice to State Historic Preservation Office;

- ☐ **Exhibit 2-J** Finding of Categorical Exclusion;
- ☐ **Exhibit 2-K** Notice of Intent to Request Release of Funds (NOI/RROF); Proof of Publication of NOI/RROF;
- ☐ **Exhibit 2-L** Request for Release of Funds and Certification (RROF);
- ☐ **Exhibit 2-O** NOI/RROF and FONSI/NOI/RROF Distribution List;
- ☐ All accompanying documentation, evidence of publication of notices, and comments received, with your responses; and
- ☐ Copies of applicable correspondence to and from MDOC, such as the letter of authorization to incur administrative costs.

MDOC will review the information listed above including the NOI/RROF and the RROF. If all of the required review periods as provided in the NOI/RROF have expired, and no basis for withholding funds is found, MDOC will send a letter formally releasing CDBG funds for the project.

After the contract has been executed, a management plan has been developed and approved, all special contract conditions fulfilled, and the required forms for drawdown of CDBG funds completed, the grantee can then submit a request for needed CDBG monies to MDOC.

VII. **ENVIRONMENTAL FINDING LEVEL D**

Finding D: PREPARATION OF AN ENVIRONMENTAL ASSESSMENT (EA) IS NECESSARY AND A FINDING OF NO SIGNIFICANT IMPACT (FONSI) IS NECESSARY.

If so:

1. review examples of activities which require preparation of an EA
2. prepare EA (see Exhibit 2-M)
3. if completion of the EA results in a "finding of no significant impact", proceed as follows:
 - a. prepare combined FONSI/NOI/RROF
 - b. submit RROF to MDOC

A. THE ENVIRONMENTAL ASSESSMENT

When an Environmental Assessment (EA) is needed: If the grant involves any activities which are neither "exempt" nor "categorically excluded," the grantee must prepare an Environmental Assessment (EA) as discussed in 24 CFR 58.36.

Department of Commerce (DOC) CDBG staff have prepared a new consolidated EA form (Exhibit 2-M) for achieving compliance with both State and Federal requirements that we hope will simplify the Federal and State environmental review processes.

As part of your CDBG application, you already prepared an environmental checklist. If it is necessary for you to prepare the consolidated EA form, you will find that it is very similar to the environmental checklist. In most cases, you will likely find that you already have the necessary information to complete the form without the need to do additional research. (See Exhibit 2-M for Consolidated Environmental Assessment form).

Preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) is a typical finding for a CDBG Housing and Public Facilities project which involves a major change in land use or activity at a proposed site and no significant adverse impacts on the environment are identified.

Examples of grant activities which require preparation of an EA include:

- ☐ Rehabilitation which requires a change in land use; and
- ☐ Installing public facilities such as a first-time community-wide sewage collection and treatment system.

The Consolidated Environmental Assessment (EA) form presented in **Exhibit 2-M** consists of the following components:

- ☐ Project Identification;
- ☐ Instructions for Completing this Form; and
- ☐ Evaluation of Environmental Impact.

The form should be filled out completely, noting documentation of sources and providing additional supplementary narrative where noted in the instructions. The environmental reviews required under the Montana Environmental Policy Act (MEPA) and the review required as part of the Statutory Checklist, have been consolidated into one single form. The Consolidated Environmental Assessment Form with all attachments must be included in the grant recipient's ERR.

Suggestions for Preparing the Environmental Assessment

To help local, State, and federal agencies respond more effectively to your inquiries, we suggest that you prepare a letter (including your phone number) which describes the project and attach a map to show the project's location. The map can be photocopied from the project application. Follow-up phone calls to agency officials are also suggested.

B. LEVEL OF CLEARANCE FINDING FOR ENVIRONMENTAL FINDING D

Based on the information provided in the EA, the certifying official must then make one of two following findings:

1. The project " . . . is not an action significantly affecting the quality of the human environment, and no Environmental Impact Statement (EIS) is required," **or**
2. The project " . . . is an action significantly affecting the quality of the human environment, and an EIS is required."

C. COMBINED FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS (FONSI/NOI/RROF)

If completion of the EA results in a "Finding of No Significant Impact," the Environmental Certifying Official can proceed with preparing the notices and certifications required to remove the contract conditions related to environmental considerations.

The Montana CDBG program uses a **Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF) as provided for under 24 CFR 58.44 (see Exhibit 2-N)**. Under this procedure, a minimum of 15 days for public comment must be provided at the local level, announcing the intent to Request a Release of Funds, and another 15 days provided at the MDOC level for public comment.

To carry out this step, the grantee must publish and distribute the FONSI/NOI/RROF (**Exhibit 2-N**) notice. As a minimum, the notice should be sent to the local news media, to individuals and groups known to be interested in the project, and to appropriate local, State, and federal agencies. **Exhibit 2-0 lists the agencies and groups which the grantee must provide with a copy of the FONSI/NOI/RROF.**

The FONSI/NOI/RROF must be published at least once in a newspaper of general circulation in the community. In cases where there is no regularly published local or area-wide newspaper, the grantee must post the notice prominently at the local post office. The notice should also be prominently displayed in other public buildings or sites.

The FONSI/NOI/RROF (Exhibit 2-N) states the grantee's "Finding of No Significant Impact" and indicates the grantee's intention to submit to MDOC a Request for Release of Funds no sooner than 15 days following the publication of the notice. This gives the public and State and federal agencies **at least 15 days** to submit comments to the grantee before any other action is taken. The notice further establishes **a minimum of 15 days** during which the public may comment to MDOC, **after MDOC has received the request**. MDOC must wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to release of funds.

All required minimum time periods are counted as **calendar days**. **The first day of a time period begins on the day following the publication date of any notice** (24 CFR part 58.21). The FONSI/NOI/RROF and affidavit of publication and posting, including a distribution list of all agencies, groups, and individuals receiving a copy should be included in the ERR.

The grantee may wish to utilize additional efforts to inform the public, announcing the availability of the environmental assessment. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing lists of persons interested in a particular action and notifying them of the availability of the environmental assessment, and distributing copies of the assessment for local review and comment.

D. REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (RROF)

After the local comment period of 15 days and after all public comments have been considered, the grantee should then promptly submit a Request for Release of Funds and Certification (RROF) (Exhibit 2-Q) to MDOC, accompanied by proof of publication of the FONSI/NOI/RROF. ► Note: This document should only be signed by the Environmental Certifying Officer after the 15 day local comment period is completed.

After a period of at least 15 calendar days from the date the RROF is received by MDOC and MDOC has reviewed the environmental information required under NEPA and MEPA and has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, MDOC will send a letter of Release of Funds to the grantee. Assuming that the contract has been executed, a management plan has been developed, all special grant conditions have been fulfilled, and the required forms for drawdown of funds completed, the grantee can then submit a drawdown request for needed CDBG funds to MDOC. A sample time-line is presented below:

March 15, 200__	Local publication of FONSI/NOI/RROF
March 16-30, 200__	Minimum 15-day local comment period
April 2, 200__	Grantee mails RROF to MDOC, allowing three days for mail delivery
April 5, 200__	MDOC receives RROF
April 6-20, 200__	MDOC 15-day comment period
April 21, 200__	MDOC release of funds

E. ERR FILE REQUIREMENTS FOR FINDING D

The following must be maintained in the ERR file for an Environmental Assessment and sent to MDOC:

- ☐ **Exhibit 2-A** Designation by adopted resolution of Environmental Certifying Officer;
- ☐ **Exhibit 2-D** Eight-Step Decision Making Process (if applicable);
- ☐ **Exhibit 2-E** Documentation of Eight-Step Decision Making Process (if applicable);
- ☐ **Exhibit 2-F** Early Public Notice (if applicable);
- ☐ **Exhibit 2-G** Notice of Explanation (if applicable);

- ☐ Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter, including **Exhibit 2-I**, Notice to State Historic Preservation Office;
- ☐ **Exhibit 2-M** Consolidated Environmental Assessment (EA) Form;
- ☐ **Exhibit 2-N** Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF) - *Note: **Exhibit 2-T** or **Exhibit 2-U** may be used in place of **Exhibit 2-N** only when CDBG funds are being used in conjunction with RD or SRF funds;
- ☐ **Exhibit 2-Q** Request for Release of Funds (RROF) and Certification;
- ☐ **Exhibit 2-O** NOI/RROF and FONSI/NOI/RROF Distribution List;
- ☐ **Exhibit 2-T** COMBINED FONSI/NOI/ RROF for **SRF/CDBG jointly-funded projects**
- ☐ **Exhibit 2-U** COMBINED FONSI/NOI/ RROF for **RD/CDBG jointly-funded projects**
- ☐ Proof of publication for each public notice;
- ☐ All accompanying documentation, evidence of notices of publication, and any comments received; and
- ☐ Copies of applicable correspondence to and from MDOC, such as a letter of authorization to incur administrative costs.

A complete copy of the ERR must also be sent to MDOC. By keeping a copy of the ERR on file with the MDOC, other State and federal agencies located in Helena can contact the MDOC, if necessary, to review project environmental materials.

It is important that your environmental submission be complete. In addition to being reviewed by MDOC CDBG staff, your Environmental Review Record may later be reviewed in detail by HUD environmental specialists to assure local and State compliance with federal environmental requirements.

VIII. **ENVIRONMENTAL FINDING LEVEL E**

Finding E: PREPARATION OF AN ENVIRONMENTAL ASSESSMENT (EA) IS NECESSARY AND FINDING OF SIGNIFICANT IMPACT IS NECESSARY

If so:

Consult MDOC for further action.

If there is a Finding of Significant Impact, immediately contact MDOC for further guidance. MDOC will work directly with the grantee to determine a course of action for fulfillment of the environmental requirements.

IX. **OTHER ENVIRONMENTAL ISSUES**

A. **LEAD-BASED PAINT**

Many homes and apartments built before 1978 have paint that contains lead, which is referred to as lead-based paint (LBP). LBP is defined as paint on surfaces with lead in excess of 1.0 milligram per square centimeter (1.0 mg/cm²) as measured by an x-ray fluorescence detector, or 0.5 percent by weight. If CDBG funds are to be spent on a unit or provide assistance to a tenant, compliance requirements must be strictly adhered to so that homebuyers, homeowners and tenants avoid LBP hazards.

Lead from paint, chips and dust can pose serious health hazards if not taken care of properly. Lead-based paint is a potential threat to all people, but a serious threat to the health of children 6 years (72 months) of age or under. The most common sources of childhood exposure to lead come from breathing or swallowing lead dust, or by eating soil or paint chips containing lead. If a child (age six or under) with an identified elevated blood lead level occupies a particular CDBG-assisted unit, then the grantee is responsible for inspection, testing and abatement of the LBP hazard. Contact your CDBG Program Specialist for detailed information.

Lead-based paint regulations apply to all activities using CDBG funds and will be fully enforced by HUD. The **only types of housing** that are **not covered by the regulations** are listed below.

- ✓ Housing built after January 1, 1978, when lead paint was banned for residential use;
- ✓ Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there;
- ✓ Zero-bedroom dwellings, including efficiency apartments, and single-room occupancy housing;

- ✓ Property that has been found to be free of lead-based paint by a certified lead-based paint inspector;
- ✓ Property where all lead-based paint has been removed; and/or
- ✓ Any rehabilitation or housing improvement that does not disturb a painted surface.

For housing that has been kept in good repair and upon a visual assessment, does not have deteriorated paint, LBP is not considered to be a hazard. Grantees who intend to perform the initial visual inspection of housing units may take an on-line training course provided by HUD at: <http://www.hud.gov/lea/training/visualassessment/h00200.htm>. If deteriorated paint is present, follow the summary of requirements regarding LBP in CDBG **Exhibit 2-V** which outlines the various compliance requirements.

Rehabilitation work is not considered to be a hazard if the work disturbs:

- ✓ less than 2 square feet of lead-based paint in any interior room or space,
- ✓ less than 10% of a component with a small surface area, such as interior window sills, baseboards and trim, or
- ✓ less than 20 square feet on any exterior surface.

The amount of CDBG funds spent per unit on rehabilitation activities determines the depth of requirements necessary to comply with LBP regulations. If there is deteriorated paint and/or more than 2 sq. ft. of LBP will be disturbed, the lead hazard must be evaluated, then stabilized, reduced or abated, and finally cleared. **Exhibit 2-V** provides guidance on the requirements regarding LBP. **Exhibit 2-W** outlines the procedures to follow for homebuyer assistance programs.

Regardless of the housing's state of repair, homeowners and tenants must still be informed of the possible LBP risks. Before ratification of a contract for housing sale or lease, grantees must provide all information known to prospective tenants, homeowners, or purchasers, on the presence of lead-based paint for all structures built before 1978. (CDBG can provide sample disclosure forms for homebuyers and for renters).

Grantees are also required to give homebuyers and renters the pamphlet titled *Protect Your Family from Lead in Your Home* (available from EPA on the web in English or Spanish at <http://www.epa.gov/opptintr/lead/leadprot.htm> and from the Government Printing Office, which can be reached at 202/512-1800 and on the web at <http://www.access.gpo.gov/#info>). Grantees also need to obtain and keep signed Acknowledgements of Receipt (**Exhibit 2-X**) of this pamphlet on file for the period of affordability, plus three years. Homebuyers and tenants are granted 10 calendar days to inspect and assess lead-based paint hazards (at their own expense) before being obligated to purchase or rent the housing.

If a grantee conducts an evaluation and hazard reduction activity, HUD requires specific notification procedures. **Exhibit 2-Y** provides the following notices:

- 2-Y.1 Notice of Lead-Based Paint Inspection
- 2-Y.2 Notice of Lead-Based Paint Risk Assessment
- 2-Y.3 Notice of Lead Hazard Evaluation or Presumption
- 2-Y.4 Notice of Lead Hazard Reduction

HUD requires Environmental Protection Agency (EPA) certified personnel to provide LBP risk assessment, LBP abatement services and LBP clearance services for activities that receive more than \$25,000 of CDBG rehabilitation assistance per unit. Workers, who are not EPA-certified may do the abatement work *if* an EPA-certified supervisor is at the work site at all times. Again, **Exhibit 2-V** provides guidance regarding LBP compliance.

When assistance is provided to a participant who will live in a structure built before 1978, Grantees must inform the participant of the potential LBP risk. Additionally, the Grantee must provide firm evidence of LBP compliance in individual participant files.

B. ASBESTOS

Asbestos is the name for a group of naturally occurring minerals that separate into strong, very fine fibers. Because of its heat resistance and durability, asbestos has been used extensively in construction and industrial applications. In residential applications, asbestos has been used most commonly in materials used for purposes of reinforcement, heat and cold insulation, condensation control, fire protection, sound dampening, decoration, and texturing.

Asbestos is a health concern because it is a carcinogen. Asbestos can break down into very small fibers that can become airborne and stay airborne for a long time. Exposure generally occurs by inhalation or ingestion. Because of their durability, these fibers can remain in the body for many years and thereby become the cause of asbestos-related diseases, such as asbestosis, mesothelioma, and other cancers.

An asbestos containing material (ACM) is any material that contains more than 1% asbestos. "Friable" asbestos materials pose the greatest health risk because of their ability to easily become airborne, and are thus the most regulated ACM. The EPA defines "friability" as the ability of a dry asbestos-containing material to be crumbled, pulverized, or reduced to powder *by hand pressure*. Examples of a friable ACM include thermal system insulation and spray-on fireproofing. ACM such as floor tile, roofing, and asbestos cement products are typically non-friable; however, demolition and renovation activities can often render non-friable ACM friable.

The State of Montana is delegated by EPA to administer sections of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) regulations, through the Montana Department of Environmental Quality's Asbestos Control Program. The Asbestos Control Program regulates "asbestos abatement" activities in buildings where **three (3) or more linear or square feet of friable** (easily crumbled, pulverized, or reduced to powder) **or potentially friable ACM are abated**. According to the Asbestos Control Program, **asbestos abatement** includes "the removal, encapsulation, enclosure, repair, renovation,

demolition, placement, transportation, and/or disposal of friable or *potentially-friable* ACM.”

The most likely scenario for asbestos issues in a CDBG project is during rehabilitation of a structure. If a CDBG project meets the above definition of an "asbestos abatement project", there are certain requirements that must be met:

- ✓ Asbestos abatement projects require an inspection by a Montana Accredited Asbestos Inspector prior to renovation or demolition activities.
- ✓ All ACM that will be impacted by renovation or demolition activities must be removed before demolition or renovation activities begin.
- ✓ Asbestos abatement projects require a permit from the Asbestos Control Program and must be done by persons with a Montana Contractor/Supervisor or Worker accreditation. A list of *Asbestos Consultants/Contractors/Laboratories*, is provided in **Exhibit 2-Z** for your use and information.
- ✓ The Asbestos Control Program must be notified 10 working days prior to asbestos abatement and demolition activities.

The Department of Environmental Quality’s Asbestos Control Program may be reached at (406) 444-3490. Their web site is www.deq.state.mt.us/pcd/awm/acp.

Another agency having regulatory authority over asbestos abatement projects is the Federal Occupational Safety and Health Administration (OSHA). OSHA regulates worker safety and health as they relate to asbestos in the construction industry. Like the Asbestos Control Program, OSHA’s asbestos standard (29 CFR 1926.1101) also requires an asbestos inspection prior to initiating construction activities, as part of its hazard communication requirement. DEQ’s Asbestos Control Program regulations have adopted by reference some of OSHA’s asbestos regulations; however, for more complete information on OSHA’s regulatory and reporting requirements, contact OSHA at (800) 321-6742, or in Billings at (406) 247-7494.

C. RADON

Radon is a naturally occurring gas, produced by the breakdown of uranium in soil, rock and water. Air pressure inside a home is usually lower than pressure in the soil around the home's foundation. Because of this difference in pressure, a house can act like a vacuum, drawing radon in through the foundation cracks and other openings. Radon may also be present in well water and can be released into the air in a home when water is used for showering and other household uses. In most cases, radon entering a home through water is a small risk compared to radon entering a home from the soil.

See EPA’s Radon-Indoor Air website for Radon hazard information <http://www.epa.gov/iaq/radon/index.html> and EPA’s “Radon -- Frequent Questions” webpage at <http://www.epa.gov/iaq/radon/radonqa1.html>

The amount of radon in the air is measured in “Pico curies of radon per liter of air,” or “pCi/L”. The U.S. Congress has set a long-term goal that indoor radon levels be no more than outdoor levels. There are about 0.4 pCi/L of radon normally found in the outside air. The Environmental Protection Agency (EPA) recommends fixing a structure if the results of testing show radon levels of 4 pCi/L or higher.

A radon disclosure statement must be provided on at least one document prior to the execution of any contract for purchase of all inhabitable real property. The buyer shall acknowledge receipt of the disclosure statement by signing a copy of the disclosure statement.

If a seller knows the building has been tested for radon gas, the seller must provide a copy of the results of that test and evidence of any subsequent mitigation or treatment. If testing was not accomplished, a statement will appear on the transaction documents stating testing was not accomplished, in addition to a statement about the health hazards caused by the presence of radon.

Other sources of information are available in the form of several booklets produced by the EPA. The booklets are available by request from MDOC. The State of Montana's radon contact phone number for general information is (406) 444-6768. **If radon becomes an issue in your CDBG project, contact your CDBG Program Specialist for assistance.**

CHAPTER 2

EXHIBITS

- 2-A.1 Designation of Environmental Certifying Official**
- 2-A.2 Resolution Designating Environmental Certifying Officer**
- 2-B.1 Abbreviated Environmental Checklist**
- 2-B.2 MDOC/CDBG Environmental Review Record Checklist**
- 2-C Statutory Checklist of Applicable Statutes and Regulations**
- 2-D Eight-Step Decision Making Process**
- 2-E Documentation of Eight-Step Decision Making Process**
- 2-F Early Public Notice for Floodplains and/or Wetlands**
- 2-G Notice of Explanation for Floodplains and/or Wetlands**
- 2-H Historic Preservation Review Process**
- 2-I Notice to State Historic Preservation Office**
- 2-J Finding of Categorical Exclusion**
- 2-K Notice of Intent to Request Release of Funds (NOI/RROF)**
- 2-L Request for Release of Funds and Certification (RROF) For a Finding of Categorical Exclusion**
- 2-M Consolidated Environmental Assessment (EA) Form**
- 2-N Combination Notice: Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF)**
- 2-O NOI/RROF and FONSI/NOI/RROF Distribution List**
- 2-P Finding of Exemption for All Project Activities**
- 2-Q Request for Release of Funds and Certification (RROF) For an Environmental Assessment**

- 2-R Finding of Exemption for All Project Activities (for Certain Categorically Excluded Activities)**
- 2-S Sources of Environmental Information**
- 2-T Combined FONSI/NOI/ RROF for SRF/CDBG funded projects**
- 2-U Combined FONSI/NOI/ RROF for RD/CDBG funded projects**
- 2-V HUD Lead-Based Paint Requirements for Housing Rehabilitation Projects**
- 2-W Lead-Based Paint – Homebuyer Assistance**
- 2-X Acknowledgment of Receipt**
- 2-Y Lead-Based Paint Notices:**
 - 2-Y.1 Notice of Lead-Based Paint Inspection**
 - 2-Y.2 Notice of Lead-Based Paint Risk Assessment**
 - 2-Y.3 Notice of Lead Hazard Evaluation or Presumption**
 - 2-Y.4 Notice of Lead Hazard Reduction**
- 2-Z Asbestos Consultants, Contractors and Laboratories**